

April 4, 2003

US Department of Transportation
Docket Management Facility (USCG -2002-13147)
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

RE: **Penalties for Non-submission of Ballast Water Management Reports**

To Whom It May Concern:

The Shipbuilders Council of America (SCA) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Department of Transportation, US Coast Guard on January 6, 2003. Through the notice, the Coast Guard solicited comments on its proposal to include penalty provisions for non-submission of Ballast Water Management Reports and widening the applicability of the reporting and recordkeeping requirement to all vessels bound for ports or places within the United States.

SCA is the national trade association representing commercial shipyard companies engaged in shipbuilding, ship repair and cleaning. SCA represents 72 shipyard companies, which own and operate over 120 shipyards in 23 states. SCA members employ over 35,000 shipyard workers, that is over 70 percent of the total U.S. shipyard workers primarily engaged in commercial shipyard activity.

Several SCA members own and operate tugs, barges and/or dry-docks. In particular, many have facilities that are in multiple Captain of the Port (COTP) zones which means that they would not be exempted from either the reporting or recordkeeping requirements when their vessels move from facility to facility.

In the Supplementary Information sector of the NPRM, the Coast Guard lists several reasons why they propose to create penalty provisions for reporting requirements. Obviously, these reasons are based upon the prevention of invasive species creating damage through ballast water discharge as required by the Nonindigenous Aquatic Nuisance and Prevention and Control and the National Invasive Species Acts. Like the Coast Guard, SCA is concerned about the environment and is jointly working with the Environmental Protection Agency on the creation of an overall Environmental

Management System for shipyards as well as a Stormwater Best Management Practices template.

As a result of the NPRM, there are a few items that the Council would like to bring up for comment.

First, if tanks or voids are not carrying ballast, although they may be capable of carrying ballast water, reporting should not be required. If the Coast Guard's objective is to focus on the pathways of invasive species, requiring vessel owners and operators to simply report the existence of tanks or voids that are not carrying any ballast water does not provide the agency with any value-added information; it merely creates a paperwork burden on the vessel operator. Under this proposal, a company that operates shipyard(s) in addition to other facilities in different COTP zones and operates a fleet of 500 hopper barges, with all voids included, would be required to file 7,500 reports annually, even if the vessels with ballast tanks did not carry any ballast water. Now just think of how many reports a company with 4000 barges and 150 vessels would have to make. Further, think of the number of reports that would be necessary, nationwide, based on these examples.

Second, the issue of dry-docks and reporting needs to be addressed even though it is not considered in the NPRM. For example, since drydocks do not normally move between COTP zones, they would be exempt from reporting. However, the vessels being drydocked for repairs, which come in from other ports, must get de-ballasted in order to dock or drained while on the dock. This type of action raises the question, does this qualify as an event that needs to be reported and who would be responsible for reporting, the vessel operator or the dry-dock operator?

Third, the Council urges the Coast Guard to exempt inland vessels and barges from the reporting requirements recognizing that river flows facilitate the spread of invasive species regardless of ballast water operations and without the existence of concrete scientific evidence that towboats and barges are a pathway/source of invasive species on the inland waterways.

Fourth, the Coast Guard must coordinate its ballast water management requirements with state-imposed requirements so vessel operators are not strapped with duplicate and/or conflicting reporting requirements. Currently, The West Coast Ballast Water Working Group is a good example of state-federal-industry coordination on ballast water issues.

Fifth, the existing Ballast Water Reporting Form was designed for deep-draft vessels on ocean voyages. The form should be revised and simplified to collect information from tug and barge operators about domestic coastwise voyages.

Sixth, SCA urges the Coast Guard to allow domestic vessel and barge operators in the coastwise trade carrying ballast water to submit reports every thirty days rather than 24 hours in advance of arrival in the first U.S. port. Many tug and barge voyages are less than 24-hours in duration. Under the proposed rule, vessel operators would have to file their ballast water reports before the voyage even begins.

Seventh, the penalty provisions in the rule are excessive. The NPRM as currently drafted implements criminal penalties against those that follow the reports while civil and/or administrative penalties are not even considered. In this case, the Council believes that civil and/or administrative penalties would be more than enough to address the issue of non-compliance. Moreover, the NPRM would impose significant fines and penalties against inland and coastal vessel and barge operators for failing to file their reports even though the reporting requirements for these vessels (not traveling beyond the EEZ) are just now being proposed. Domestic vessel operators are being penalized under this NPRM for the non-compliance with the reporting requirements of deep-draft ocean-going vessels. Domestic vessel operators have never had the opportunity to file ballast water reports without the risk of incurring penalties.

Finally, the penalty provisions in the NPRM are applicable whether you are carrying ballast water or not. Given the Coast Guard's interest in tracking and monitoring invasive species pathways into U.S. waters, it is more important to know about tanks that are carrying ballast water than those that are empty. It seems capricious that the penalty provisions make no distinction between full or empty ballast tanks.

SCA shares the Coast Guard's goals of protecting the environment; however, there are several questions based upon the new proposal that need to be addressed.

In conclusion, SCA is deeply concerned about the implementation of a rule that could have costly compliance effects upon our members. SCA would be pleased to further address any of the comments contained herein. If SCA may be of assistance, please contact me at (202) 347-5462.

Sincerely,

Allen Walker
President